
TAN KENG KOH**v.****CHAN KAI KAH & ORS.**

HIGH COURT, SINGAPORE

AP RAJAH J

[DISTRICT COURT APPEAL NO. 17 OF 1981]

5 MARCH 1982

LANDLORD AND TENANT: *Premises - Whether within or outside the protection of the Control of Rent Act - Burden of proof - Whether on the landlord or tenant - Claim for repossession - Control of Rent Act (Cap. 226).*

In the statement of claim the respondents pleaded that they were not precluded by the Control of Rent Act Cap. 226 from recovering possession of the said premises. The appellant's sole defence was that he was entitled to protection under the Control of Rent Act, as he had occupied the premises prior to September 1947. The learned trial Judge gave judgment in favour of the respondents for possession of the said premises. The appellant/tenant appealed on the grounds that the learned District Judge was wrong in law and in fact in deciding the case on the basis that the burden of proving that the premises within the Act was on the appellant.

Held:

[1] In proceedings for possession of premises it is for the landlord and not for the tenant to prove that the premises in question is outside the protection of Control of Rent Act.

[2] The trial Judge had approached the whole case as if the burden of proof was on the appellant/tenant and not on the respondents/landlords. He had not addressed his mind to the question of the burden of proof in such proceedings being on the respondents/landlords and not on the appellant/tenant.

Case referred to:*Dadhi Ral Yado v. Mukat Rai [1958] 24 MLJ 193**For the appellant - Mohan Singh**For the respondent - Ng Wing Chong***JUDGMENT****AP Rajah J:**

The plaintiffs in District Court summons No. 1933 of 1980, who are the respondents in this appeal, purchased the land and premises known as Lot 104 of Town Subdivision XXIX on 30 September 1969 together with the premises known as No. 215-D Balestier Road erected thereon. They commenced proceedings for possession of the said premises against the defendant, the appellant herein. In para. 5 of the statement of claim they pleaded that "the plaintiffs are not precluded by the Control of Rent Act Cap. 226 (the Act) from recovering possession of the said premises, the same not being within the purview of the said Act". In para. 7 of the defence the defendant claimed that the said premises were within the purview of the Act and claimed protection under it. In his grounds of decision, the learned trial Judge stated, "The defendant's sole defence at the trial was that he was entitled to protection under the Control of Rent Act Cap. 226, having occupied the premises prior to September 1947. All other defences pleaded by him in his defence were abandoned."

- a** The learned trial Judge gave judgment for the plaintiffs for possession of the said premises. Against this judgment the defendant appealed to the High Court and one of his grounds of appeal was that, "The Learned District Judge was wrong in law and in fact in failing to consider that on the evidence adduced by the plaintiffs, the plaintiffs had not discharged the burden of proof, the onus of which was on the plaintiffs to prove that the Premises were not subject to the Control of Rent Act, and deciding the case on the basis that the burden
- b** of proving that the premises were within the Control of Rent Act was on the defendant/appellant". At the end of the hearing of the appeal I allowed the appeal with costs here and below. The plaintiffs (respondents) are now appealing against my judgment.

- Now, it is well settled law that in proceedings for possession of premises it is for the plaintiff (landlord), and not for the defendant (tenant), to prove that the premises in respect of which possession is being sought is outside the protection of the Act, see *Dadhi Ral Yado v. Mukat Rai* [1958] 24 MLJ 193. The plaintiffs in the District Court called three other witnesses beside the 1st plaintiff himself. The first witness was a clerical officer from the Property Tax Department who said that the premises were first assessed to property tax on 1 January 1958 on an application -
- c**

- for a house number plate for a house near to 215 Balestier Road. The reason given was that his family had great difficulty in applying for water and he intended to apply for separate water supply (p. 18 of Record of Appeal).
- d**

The second witness, a senior clerk from the Public Utilities Board, said that -

- According to records, the water account was operated before 27 May 1958. Electricity was applied for on 27 May 1958. It is a non-domestic commercial account" (p. 19 of Record of Appeal).
- e**

The third witness, a clerical officer from the National Registration Office, gave evidence that -

- the identity card No. 0404775/C's holder is Tan Keng Koh (the defendant-tenant). From records the first address recorded on 31 October 1948 is 256E Changi Road 6¾ m.s. On 10 January 1953 it was changed to 265 Changi Road. On 7 February 1958 it was changed to 215D Balestier Road" (p. 20 of Record of Appeal).
- f**

The 1st plaintiff's evidence was "I do not know when 215D Balestier Road was erected" (p. 21 of Record of Appeal). From the evidence of all these four witnesses it seems clear to me that the plaintiffs had not discharged their burden of proof.

- It is quite apparent from a reading of the judgment of the learned trial Judge that he approached the whole case as if the burden of proof was on the defendant and not on the plaintiffs. His whole judgment deals with the evidence adduced by the defendant. Nowhere does he say anything about the evidence led by the plaintiffs in the case before him.
- g**

- I allowed the appeal for the reason that the learned trial Judge had not addressed his mind to the question of the burden of proof in such proceedings being on the plaintiffs (landlords) and not on the defendant (tenant).
- h**

Also found at [1982] CLJ 248
